IN THE HIGH COURT OF UTTARAKHANT AT NAINITAL
Criminal Appeal No. 1731 of 2001
(Old No. 373 of 1994)

Mustakin S/o Mohammadalin
R/o Miyawala Marfi
Dehradun ….Appellant

Vs

State of U.P. …..Opposite Party

Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the appellant against the judgment and order dated 11.02.1994 passed by IInd Additional District Judge, Dehradun in S.T. No. 149 of 1992 under Sectio 376/511 I.P.C. and convicting the appellant under Section 354 I.P.C. and sentencing him for one year rigorous imprisonment.

2. Sri Tanju Semwal was appointed as amicus curiae in this case earlier. Now he has been appointed as the penal lawyer, therefore, he has requested to withdraw from the case.

3. The prayer is allowed and his name is deleted from the appeal as amicus curiae.

4. None has appeared on behalf of the appellant, although the name of Sri V.B.S. Negi appeared in the cause list for appellant, therefore, I heard A.G.A. and perused the record.

5. The impugned judgment against which the appeal has been preferred shows that the appellant who convicted under Section 354 I.P.C. and was sentenced for one year rigorous imprisonment by the Court vide judgment and order dated 11.02.1994.

6. The record further reveals that this Court on 25.10.2004 issued non boilable warrants against the appellant

as the appellant did not appear before the Court when the case was taken up for hearing.

7. The C.J.M., Dehradun reported this Court that the appellant in compliance of the order passed by this Court was sent to jail on 20.10.2006 and since then he is in jail. The Superintendent (Jail), Dehradun has informed to this Court that the appellant is still in jail although he has already undergone the sentence awarded by the trial court. The Jail Superintendent has also informed the Court that although the convict had already undergone the sentence awarded by the court, but he is not being released as the jail authorities have not received any order from the court concerned in this regard.

8. I have perused the judgment and entire documents available on record. However, on the close scrutiny of the evidence available on record, I am of the view that the impugned judgment passed by the trial court does not suffer with any infirmity. The appeal is liable to be dismissed. Accordingly, the present appeal is dismissed. The impugned judgment and order passed by trial court is hereby confirmed.

9. However, after having considered the entire circumstances of the case, I am of view that the appellant has already undergone the sentence awarded by the trial court as he is in jail since 20.10.2006. Hence, in view of the above, the appellant/convict shall be released forthwith by the jail authority on account of the reason that he has already undergone sentence awarded against him.

29.10.2007 **(B.C. Kandpal, J.)**
ASWAL